IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12461 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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CHHAGANBHAI VASRAMBHAI VALODRA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

HMR ASIM PANDYA for HL PATEL ADVOCATES for Petitioner(s) : 1,
MR KL PANDYA AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 23/12/2005

ORAL JUDGMENT

1. RULE. Mr.K.L.Pandya, learned A.G.P.waives service of Rule for the respondents.

2. This petition under Article 226 of the Constitution is filed with a prayer to direct the respondents to consider the service rendered by the

petitioner from 13.5.1970 to 23.10.1974 on fixed pay-scale for the purpose of fixation of pension and to revise his pension accordingly.

3. There is no dispute about the fact that the petitioner was appointed on 13.05.1970 by M.P.Shah Arts and Science College, Surendranagar on the post of sweeper in the pay-scale of Rs.90-2-110 by way of temporary appointment and he was again appointed by the order dated 15.7.1970 in the fixed salary of Rs.60/- upto 23.10.1974. Thereafter, he came to be regularly appointed by the order dated 21.10.1974 and he served with promotions till he reached the age of superannuation. At the time of settling his pension, the service for the period from 13.5.1970 to 23.10.1974 was excluded on the ground that he was on fixed pay and that period could not be counted or included in the qualifying service of the petitioner under Rule 25 (i) (g) of the Gujarat Civil Services (Pension) Rules, 2002. That is also the only objection raised by the respondent in the affidavit-in-reply filed by the Education Inspector in the office of the District Education Officer on which the learned A.G.P.relies.

4. The learned counsel for the petitioner, Mr.Asim Pandya, submitted that the definition of “qualifying service” given in Rule 25 is inclusive and specifically includes in clause (g) the services

rendered as full time 'attendant' by a Government employee before his regular appointment in class IV service. Therefore, by the express provisions of the Rule, the petitioner's previous service for the period from 13.5.1970 to 23.10.1974 was required to be included and the pension was required to be revised accordingly. The learned A.G.P. could neither dispute the factual position of the previous service of the petitioner nor the legal position that the previous service was required to be included in the qualifying service in counting the pensionable service of the petitioner. Therefore, the petition is required to be allowed and it is accordingly allowed with the direction to the respondents to recalculate the pension on the basis that the petitioner had rendered continuous service from 13.5.1970 till the date of his retirement and pay the arrears of pension and the current pension accordingly. That process shall be carried out within a period of one month, as stated by the learned A.G.P. Rule is accordingly made absolute with no order as to costs. Direct Service is permitted.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)